IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1406 of 2002.

Judgment reserved on 17.4.2007.

Decided on: April 26, 2007.

Tek Chand

… … … Petitioner.

Versus

Union of India & Ors.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the petitioner(s): **Mr. Bimal Gupta, Advocate.**

For the Respondents: **Mr. Ravinder Thakur, Central Govt. Counsel.**

Rajiv Sharma, Judge:

By way of present writ petition, the petitioner has assailed memo dated 1.3.1991 alongwith charge-sheet (Annexure P-3), inquiry report dated 11.12.1991 (Annexure P-11), punishment order dated 15.2.1992 (Annexure P-19) and appellate order dated 7.6.2003 (Annexure P-24).

The crux of the submissions made by Mr. Bimal Gupta during the course of argument is that appellate order dated l7th June, 2002 Preferred against the penalty dated 15th February, 1992 is not a

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Whether reporters of local papers may be allowed to see the judgment? Yes.

speaking order. Mr. Bimal Gupta has urged strenuously that all the grounds mentioned in the appeal, i.e. Annexure P-23/A have not been taken into consideration by the appellate Authority which has led to grave miscarriage of justice.

Mr. Bimal Gupta has also taken me through Rule 47 of the Central Industrial Security Rules, 1969 to buttress his submission that the appellate authority was bound to consider that the procedure prescribed in the Rules has been complied with and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of in failure of justice.

Mr. Ravinder Thakur appearing on behalf of the respondents has submitted that the order passed by the appellate authority is a speaking order.

I have gone through the appellate order dated 7th June, 2002, and it is evident that all the grounds mentioned in the appeal have not been dealt with. It was incumbent upon the appellate authority to deal with every ground taken in appeal with due application of mind. The appellate authority is required to look into the entire evidence recorded by the Enquiry Officer and must also peruse the enquiry report minutely to satisfy himself that the same has been held in accordance with law. The delinquent is always to be treated in just and fair manner even though he belongs to disciplined force, i.e. C.I.S.F.

It is clear from the appellate order that the petitioner has not been heard in person before passing the order. The petitioner was ought to be afforded personal hearing besides taking into consideration the

grounds mentioned in appeal. The personal hearing is integral part of the spectrum of natural justice.

The necessity of assigning reasons by the appellate authority is to enable the writ court to ascertain as to whether he had applied his mine to the relevant factors which the law requires him to do. It will be pertinent to note that the disciplinary proceedings are quasi-judicial in nature and the appellate authority should apply its mind as to whether sufficient material had been brought on record to sustain the findings recorded by the Enquiry Officer. Hon'ble Supreme Court in "R.P. Bhatt v. Union of India 1986 (2) SCC 651" has held categorically that the appellate order should be a speaking order. Your Lordships of the Supreme Court has observed:-

> "**4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the term of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.**
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> **5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in**

violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) or Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

Secondly, Hon'ble Supreme Court in "Narinder Mohan Arya versus United India Insurance Co. Ltd. And others (2006) 4 Supreme Court Cases 713 has held that the appellate order must contain reasons. Relevant portion of the judgment is extracted herein below:-

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In para 13 of the memorial the appellant at the first opportunity raised a contention that the order of the Appellate Authority was not a speaking order at all, besides drawing the attention of the Chairman-cum-Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31-3-1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi-criminal in nature."

In view of the law laid down by the Hon'ble Supreme Court, the appellate order dated 7th June, 2002 is liable to be set aside. Accordingly, the writ petition is partly allowed and the appellate order dated 7th June, 2002 is quashed and set aside. The appellate authority, i.e. respondent No.2 is directed to hear the appeal afresh by taking into consideration all the grounds made in appeal. Respondent No.2 is further directed that while hearing the appeal, the petitioner should be heard in person. The respondent No.2 is also directed to rehear the appeal within a period of two months from receipt of the judgment of this Court.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 26, 2007.
(sck)